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Filing date: **09/19/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92049790
Party	Defendant Breathe California of Sacramento-Emigrant Trails
Correspondence Address	Breathe California of Sacramento-Emigrant Trails 909 12th Street Sacramento, CA 95814 UNITED STATES cjohnson@sacbreathe.org
Submission	Answer
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Date	09/19/2008
Attachments	Scan001.PDF ( 5 pages )(90098 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 3,235,385  
Registered April 24, 2007  
Mark: THE HACKADEMY AWARDS

ACADEMY OF MOTION PICTURE ARTS  
AND SCIENCES,

Petitioner,

v.

BREATHE CALIFORNIA OF SACRAMENTO –  
EMIGRANT TRAILS,

Respondent.

Cancellation No. 92049790

ANSWER TO PETITION FOR CANCELLATION

TO THE COMMISSIONER FOR TRADEMARKS:

Respondent BREATHE CALIFORNIA OF SACRAMENTO – EMIGRANT TRAILS (“BREATHE CALIFORNIA”) hereby answers Petitioner ACADEMY OF MOTION PICTURE ARTS AND SCIENCES’s (“ACADEMY”) Petition for Cancellation of Registration No. 3,235,385 for the mark THE HACKADEMY AWARDS as follows:

1. BREATHE CALIFORNIA is without sufficient information and knowledge as to form a belief as to the truth or falsity of Paragraph No. 1.
2. BREATHE CALIFORNIA admits the allegations of Paragraph 2.
3. BREATHE CALIFORNIA is without sufficient information and knowledge as to form a belief as to the truth or falsity of Paragraph No. 3.
4. BREATHE CALIFORNIA is without sufficient information and knowledge as to form a belief as to the truth or falsity of Paragraph No. 4.

5. BREATHE CALIFORNIA is without sufficient information and knowledge as to form a belief as to the truth or falsity of Paragraph No. 5.

6. BREATHE CALIFORNIA is without sufficient information and knowledge as to form a belief as to the truth or falsity of Paragraph No. 6.

7. BREATHE CALIFORNIA is without sufficient information and knowledge as to form a belief as to the truth or falsity of Paragraph No. 7.

8. BREATHE CALIFORNIA is without sufficient information and knowledge as to form a belief as to the truth or falsity of Paragraph No. 8.

9. BREATHE CALIFORNIA is without sufficient information and knowledge as to form a belief as to the truth or falsity of Paragraph No. 9.

10. BREATHE CALIFORNIA is without sufficient information and knowledge as to form a belief as to the truth or falsity of Paragraph No. 10.

11. BREATHE CALIFORNIA is without sufficient information and knowledge as to form a belief as to the truth or falsity of Paragraph No. 11.

12. BREATHE CALIFORNIA is without sufficient information and knowledge as to form a belief as to the truth or falsity of Paragraph No. 12.

13. BREATHE CALIFORNIA is without sufficient information and knowledge as to form a belief as to the truth or falsity of Paragraph No. 13.

14. BREATHE CALIFORNIA is without sufficient information and knowledge as to form a belief as to the truth or falsity of Paragraph No. 14.

15. BREATHE CALIFORNIA admits the allegations of Paragraph 15.

16. BREATHE CALIFORNIA admits that it filed its application for the registration sought to be cancelled by ACADEMY on February 28, 2006. BREATHE CALIFORNIA denies the remaining allegations of Paragraph 16.

17. BREATHE CALIFORNIA denies the allegations of Paragraph 17.

18. BREATHE CALIFORNIA denies the allegations of Paragraph 18.

19. BREATHE CALIFORNIA denies the allegations of Paragraph 19.

20. BREATHE CALIFORNIA denies the allegations of Paragraph 20.

21. BREATHE CALIFORNIA denies the allegations of Paragraph 21.

#### AFFIRMATIVE DEFENSES

##### FIRST AFFIRMATIVE DEFENSE

1. BREATHE CALIFORNIA's Mark "THE HACKADEMY AWARDS" constitutes a fair use of Petitioner's ACADEMY AWARDS Marks.

##### SECOND AFFIRMATIVE DEFENSE

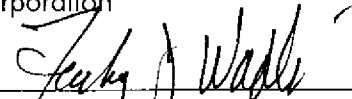
2. BREATHE CALIFORNIA'S Mark "THE HACKADEMY AWARDS" constitutes a parody of Petitioner's ACADEMY AWARDS Marks.

WHEREFORE Respondent respectfully requests that Petitioner's Petition for Cancellation be dismissed in its entirety.

DATED: September 19, 2008

Respectfully Submitted,

weintraub genshlea chediak  
law corporation

By:  \_\_\_\_\_

Joseph S. Genshlea  
Zachary J. Wadlé

Attorneys for Respondent BREATHE CALIFORNIA  
OF SACRAMENTO – EMIGRANT TRAILS

Academy of Motion Picture Arts and Sciences  
v. *Breath California* of Sacramento – *Emigrant Trails*  
US Patent and Trademark Office, Trademark Trial and Appeal Board  
Cancellation No. 92049790

### PROOF OF SERVICE

I am a citizen of the United States, employed in the City and County of Sacramento, California. My business address is 400 Capitol Mall, Eleventh Floor, Sacramento, California 95814. I am over the age of 18 years and not a party to the within action. On today's date, I caused to be served the following:

### ANSWER TO PETITION FOR CANCELLATION

I am readily familiar with the firm's practice of collection and processing correspondence for mailing in the ordinary course of business. Under this practice, correspondence is collected, sealed, postage thereon fully prepaid, and deposited the same day with the U. S. Postal Service on the same day.

  x   I caused the above documents to be served on the parties in this action by placing them in a sealed envelope in the designated area for outgoing mail, addressed as shown below.

       I caused the above documents to be personally delivered to the addressee(s) set forth below.

       I caused the above documents to be served on the parties in this action by causing them to be delivered via Federal Express, for next-day delivery to the addressee(s) set forth below.

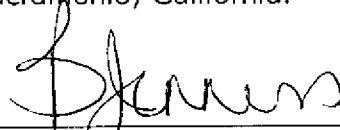
       I caused the above documents to be served on the parties in this action by transmitting them via facsimile to the addressee(s) indicated below.

       I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. (Federal)

Ulana Holubec  
Claudia Bogdanos  
Quinn Emanuel Urquart Oliver & Hedges  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York City, NY 10010

[ulanaholubec@quinnemanuel.com](mailto:ulanaholubec@quinnemanuel.com)  
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[davidquinto@quinnemanuel.com](mailto:davidquinto@quinnemanuel.com)

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 19, 2008, Sacramento, California.

A handwritten signature in black ink, appearing to read "Jenness", written over a horizontal line.

Barbara Jenness